

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ANTONIO GARCIA, JOSE AMAYA,  
NEPTALI AMAYA, RAMON MARTINEZ,  
VILMA APARICIO, ROSA FUENTES,  
LUIS LOPEZ, ALVARO SANTOS, and  
EVANA ROMERO, on behalf of themselves,  
and all other similarly situated,

Plaintiffs,

-against-

PANCHO VILLA'S OF HUNTINGTON VILLAGE,  
INC., PANCHO VILLA'S OF HUNTINGTON  
STATION, INC., VILLA'S PANCHO, INC.,  
PANCHO VILLA'S OF GLEN COVE, INC.,  
107 PANCHO RESTAURANT CORP., PANCHO'S  
RESTAURANT OF GLEN COVE, INC.,  
AGOSTINO ABBATVELLO, an individual, and  
AGOSTINO ABBATVELLO, JR., an individual,  
PAUL RODRIGUEZ, an individual, CARLOS  
BATISTA, an individual, and JOHN "DOE", an  
Individual,

Defendants.

-----X

Case No. 09CV486 (SJF) (ETB)

**ANSWER TO SECOND AMENDED  
COMPLAINT**

Defendants, Pancho Villa's of Huntington Village, Inc., Pancho Villa's of Huntington Station, Inc., Villa's Pancho, Inc., Pancho Villa's of Glen Cove, Inc., 107 Pancho Restaurant Corp., Pancho's Restaurant of Glen Cove, Inc., Agostino Abbatiello, incorrectly sued herein as Agostino Abbatvello and Agostino Abbatiello, Jr., incorrectly sued herein as Agostino Abbatvello, Jr., (collectively referred to as "Defendants"), hereby answer the plaintiffs' second amended complaint as follows:

1. Defendants do not dispute that plaintiffs seek to bring an action against them pursuant to 29 U.S.C. §201 and the New York State Labor Law. Defendants deny the substantive allegations of the second amended complaint and any allegations involving collective and/or class action and do not waive the right to challenge those allegations in this Court. All remaining allegations, to the extent that they are questions of law, are referred to the Court.

2. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph 2 of the second amended complaint.

3. Neither admit nor deny the allegations set forth in paragraph 3 of the second amended complaint and refer all questions of law to the Court.

4. Neither admit nor deny the allegations set forth in paragraph 4 of the second amended complaint and refer all questions of law to the Court.

5. Deny the allegations set forth in paragraph 5 of the second amended complaint except admit that the Defendants do business in the state of New York.

6. Neither admit nor deny the allegations set forth in paragraph 6 of the second amended complaint and refer all questions of law to the Court.

7. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph 7 of the second amended complaint.

8. Deny the allegations set forth in paragraph 8 of the second amended complaint and refer all questions of law to the Court.

9. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph 9 of the second amended complaint.

10. Deny the allegations set forth in paragraph 10 of the second amended complaint and refer all questions of law to the Court.

11. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph 11 of the second amended complaint.

12. Deny the allegations set forth in paragraph 12 of the second amended complaint and refer all questions of law to the Court.

13. Deny knowledge or information sufficient to form a belief as to the truth or

veracity of the allegations set forth in paragraph 13 of the second amended complaint.

14. Deny the allegations set forth in paragraph 14 of the second amended complaint and refer all questions of law to the Court.

15. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph 15 of the second amended complaint.

16. Deny the allegations set forth in paragraph 16 of the second amended complaint and refer all questions of law to the Court.

17. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph 17 of the second amended complaint.

18. Deny the allegations set forth in paragraph 18 of the second amended complaint and refer all questions of law to the Court.

19. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph 19 of the second amended complaint.

20. Deny the allegations set forth in paragraph 20 of the second amended complaint and refer all questions of law to the Court.

21. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph 21 of the second amended complaint.

22. Deny the allegations set forth in paragraph 22 of the second amended complaint and refer all questions of law to the Court.

23. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph 23 of the second amended complaint.

24. Deny the allegations set forth in paragraph 24 of the second amended complaint

and refer all questions of law to the Court.

25. Deny the allegations set forth in paragraph 25 of the second amended complaint except admit that plaintiff Garcia was employed by defendant Pancho Villa's of Huntington Station, Inc.

26. Deny the allegations set forth in paragraph 26 of the second amended complaint except admit that plaintiff Antonio Garcia performed as head chef for Pancho Villa of Huntington Station, Inc. at certain times.

27. Deny the allegations set forth in paragraph 27 of the second amended complaint except admit that plaintiff Jose Amaya was employed by defendant Pancho Villa's of Huntington Station, Inc.

28. Deny the allegations set forth in paragraph 28 of the second amended complaint except admit that plaintiff Jose Amaya performed certain services for Pancho Villa of Huntington Station, Inc. at certain times.

29. Deny the allegations set forth in paragraph 29 of the second amended complaint.

30. Deny the allegations set forth in paragraph 30 of the second amended complaint except admit that plaintiff Neptali Amaya performed certain services for Pancho Villa's of Huntington Station, Inc. at certain times.

31. Deny the allegations set forth in paragraph 31 of the second amended complaint except admit that plaintiff Ramon Martinez performed was employed by defendant Pancho Villa's of Huntington Station, Inc.

32. Deny the allegations set forth in paragraph 32 of the second amended complaint except admit that plaintiff Ramon Martinez performed certain services for Pancho Villa's of

Huntington Station, Inc..

33. Deny the allegations set forth in paragraph 33 of the second amended complaint.

34. Deny the allegations set forth in paragraph 34 of the second amended complaint except admit that plaintiff Vilma Aparicio performed certain services for Pancho Villa's of Huntington Station, Inc. at certain times.

35. Deny the allegations set forth in paragraph 35 of the second amended complaint.

36. Deny the allegations set forth in paragraph 36 of the second amended complaint except admit that plaintiff Rosa Fuentes performed certain services for Pancho Villa's of Huntington Station, Inc. at certain times.

37. Deny the allegations set forth in paragraph 37 of the second amended complaint.

38. Deny the allegations set forth in paragraph 38 of the second amended complaint except admit that plaintiff Luis Lopez performed certain services for Pancho Villa's of Huntington Station, Inc. at certain times.

39. Deny the allegations set forth in paragraph 38 of the second amended complaint.

40. Deny the allegations set forth in paragraph 39 of the second amended complaint except admit that plaintiff Alvaro Santos performed certain services for Pancho Villa's of Huntington Station, Inc. at certain times.

41. Deny the allegations set forth in paragraph 41 of the second amended complaint.

42. Deny the allegations set forth in paragraph 42 of the second amended complaint except admit that plaintiff Evana Romero performed certain services for Pancho Villa's of Huntington Village, Inc. at certain times.

43. Admit the allegations set forth in paragraph 43 of the second amended complaint.

44. Admit the allegations set forth in paragraph 44 of the second amended complaint.

45. Admit the allegations set forth in paragraph 45 of the second amended complaint.

46. Admit the allegations set forth in paragraph 46 of the second amended complaint.

47. Deny the allegations set forth in paragraph 47 of the second amended complaint  
and refer all questions of law to the court.

48. Admit the allegations set forth in paragraph 48 of the second amended complaint.

49. Deny the allegations set forth in paragraph 49 of the second amended complaint.

50. Deny the allegations set forth in paragraph 50 of the second amended complaint.

51. Deny the allegations set forth in paragraph 51 of the second amended complaint.

52. Deny the allegations set forth in paragraph 52 of the second amended complaint  
and refer all questions of law to the court.

53. Admit the allegations set forth in paragraph 53 of the second amended complaint.

54. Deny the allegations set forth in paragraph 54 of the second amended complaint.

55. Deny the allegations set forth in paragraph 55 of the second amended complaint.

56. Deny the allegations set forth in paragraph 56 of the second amended complaint.

57. Deny the allegations set forth in paragraph 57 of the second amended complaint.

58. Admit the allegations set forth in paragraph 58 of the second amended complaint.

59. Deny the allegations set forth in paragraph 59 of the second amended complaint.

60. Deny the allegations set forth in paragraph 60 of the second amended complaint.

61. Deny the allegations set forth in paragraph 61 of the second amended complaint.

62. Deny the allegations set forth in paragraph 62 of the second amended complaint  
and refer all questions of law to the court.

63. Admit the allegations set forth in paragraph 63 of the second amended complaint.

64. Deny the allegations set forth in paragraph 64 of the second amended complaint.

65. Deny the allegations set forth in paragraph 65 of the second amended complaint.

66. Deny the allegations set forth in paragraph 66 of the second amended complaint.

67. Deny the allegations set forth in paragraph 67 of the second amended complaint

and refer all questions of law to the court.

68. Admit the allegations set forth in paragraph 68 of the second amended complaint.

69. Deny the allegations set forth in paragraph 69 of the second amended complaint.

70. Deny the allegations set forth in paragraph 70 of the second amended complaint.

71. Deny the allegations set forth in paragraph 71 of the second amended complaint.

72. Deny the allegations set forth in paragraph 72 of the second amended complaint

and refer all questions of law to the court.

73. Deny the allegations set forth in paragraph 73 of the second amended complaint.

74. Deny the allegations set forth in paragraph 74 of the second amended complaint.

75. Deny the allegations set forth in paragraph 75 of the second amended complaint.

76. Deny the allegations set forth in paragraph 76 of the second amended complaint.

77. Deny the allegations set forth in paragraph 77 of the second amended complaint.

78. Deny the allegations set forth in paragraph 78 of the second amended complaint.

79. Deny the allegations set forth in paragraph 79 of the second amended complaint.

80. Deny the allegations set forth in paragraph 80 of the second amended complaint.

81. Deny the allegations set forth in paragraph 81 of the second amended complaint.

82. Deny the allegations set forth in paragraph 82 of the second amended complaint.

83. Deny the allegations set forth in paragraph 83 of the second amended complaint.
84. Deny the allegations set forth in paragraph 84 of the second amended complaint.
85. Deny the allegations set forth in paragraph 85 of the second amended complaint.
86. Deny the allegations set forth in paragraph 86 of the second amended complaint.
87. Deny the allegations set forth in paragraph 87 of the second amended complaint.
88. Deny the allegations set forth in paragraph 88 of the second amended complaint.
89. Deny the allegations set forth in paragraph 89 of the second amended complaint.
90. Deny the allegations set forth in paragraph 90 of the second amended complaint.
91. Deny the allegations set forth in paragraph 91 of the second amended complaint.
92. Deny the allegations set forth in paragraph 92 of the second amended complaint.
93. Deny the allegations set forth in paragraph 93 of the second amended complaint.
94. Deny the allegations set forth in paragraph 94 of the second amended complaint.
95. Deny the allegations set forth in paragraph 95 of the second amended complaint.
96. Deny the allegations set forth in paragraph 96 of the second amended complaint.
97. Deny the allegations set forth in paragraph 97 of the second amended complaint.
98. Deny the allegations set forth in paragraph 98 of the second amended complaint.
99. Deny the allegations set forth in paragraph 99 of the second amended complaint.
100. Deny the allegations set forth in paragraph 100 of the second amended complaint.
101. Deny the allegations set forth in paragraph 101 of the second amended complaint.
102. Deny the allegations set forth in paragraph 102 of the second amended complaint.
103. Deny the allegations set forth in paragraph 103 of the second amended complaint.
104. Deny the allegations set forth in paragraph 104 of the second amended complaint.



105. Deny the allegations set forth in paragraph 105 of the second amended complaint.
106. Deny the allegations set forth in paragraph 106 of the second amended complaint.
107. Deny the allegations set forth in paragraph 107 of the second amended complaint.
108. Deny the allegations set forth in paragraph 108 of the second amended complaint.
109. Deny the allegations set forth in paragraph 109 of the second amended complaint.
110. Deny the allegations set forth in paragraph 110 of the second amended complaint.
111. Deny the allegations set forth in paragraph 111 of the second amended complaint.
112. Deny the allegations set forth in paragraph 112 of the second amended complaint.
113. Deny the allegations set forth in paragraph 113 of the second amended complaint.
114. Deny the allegations set forth in paragraph 114 of the second amended complaint.
115. Deny the allegations set forth in paragraph 115 of the second amended complaint.
116. Deny the allegations set forth in paragraph 116 of the second amended complaint.
117. Deny the allegations set forth in paragraph 117 of the second amended complaint.
118. Deny the allegations set forth in paragraph 118 of the second amended complaint.
119. Deny the allegations set forth in paragraph 119 of the second amended complaint.
120. Deny the allegations set forth in paragraph 120 of the second amended complaint.
121. Deny the allegations set forth in paragraph 121 of the second amended complaint.
122. Deny the allegations set forth in paragraph 122 of the second amended complaint.
123. Deny the allegations set forth in paragraph 123 of the second amended complaint.
124. Deny the allegations set forth in paragraph 124 of the second amended complaint.
125. Deny the allegations set forth in paragraph 125 of the second amended complaint.
126. Deny the allegations set forth in paragraph 126 of the second amended complaint.

127. Deny the allegations set forth in paragraph 127 of the second amended complaint.

128. Deny the allegations set forth in paragraph 128 of the second amended complaint.

129. Deny the allegations set forth in paragraph 129 of the second amended complaint.

130. Deny the allegations set forth in paragraph 130 of the second amended complaint.

131. Deny the allegations set forth in paragraph 131 of the second amended complaint.

132. Deny the allegations set forth in paragraph 132 of the second amended complaint.

133. Deny the allegations set forth in paragraph 133 of the second amended complaint.

134. Deny the allegations set forth in paragraph 134 of the second amended complaint except admit that defendant Agostino Abbatiello, Jr. is a shareholder and the chief executive officer of Pancho Villa's of Huntington Village, Inc.

135. Deny the allegations set forth in paragraph 135 of the second amended complaint.

136. Deny the allegations set forth in paragraph 136 of the second amended complaint.

137. Deny the allegations set forth in paragraph 137 of the second amended complaint.

138. Deny the allegations set forth in paragraph 138 of the second amended complaint.

139. Deny the allegations set forth in paragraph 139 of the second amended complaint.

140. Deny the allegations set forth in paragraph 140 of the second amended complaint.

141. Deny the allegations set forth in paragraph 141 of the second amended complaint.

142. Deny the allegations set forth in paragraph 142 of the second amended complaint.

143. Deny the allegations set forth in paragraph 143 of the second amended complaint.

144. Deny the allegations set forth in paragraph 144 of the second amended complaint except admit that defendant Agostino Abbatiello, Jr. is a shareholder and the chief executive officer of Pancho Villa's of Huntington Station, Inc.

145. Deny the allegations set forth in paragraph 145 of the second amended complaint.
146. Deny the allegations set forth in paragraph 146 of the second amended complaint.
147. Deny the allegations set forth in paragraph 147 of the second amended complaint.
148. Deny the allegations set forth in paragraph 148 of the second amended complaint.
149. Deny the allegations set forth in paragraph 149 of the second amended complaint.
150. Deny the allegations set forth in paragraph 150 of the second amended complaint.
151. Deny the allegations set forth in paragraph 151 of the second amended complaint.
152. Deny the allegations set forth in paragraph 152 of the second amended complaint.
153. Deny the allegations set forth in paragraph 153 of the second amended complaint.
154. Deny the allegations set forth in paragraph 154 of the second amended complaint.
155. Deny the allegations set forth in paragraph 155 of the second amended complaint.
156. Deny the allegations set forth in paragraph 156 of the second amended complaint.
157. Deny the allegations set forth in paragraph 157 of the second amended complaint.
158. Deny the allegations set forth in paragraph 158 of the second amended complaint.
159. Deny the allegations set forth in paragraph 159 of the second amended complaint.
160. Deny the allegations set forth in paragraph 160 of the second amended complaint.
161. Deny the allegations set forth in paragraph 161 of the second amended complaint.
162. Deny the allegations set forth in paragraph 162 of the second amended complaint.
163. Deny the allegations set forth in paragraph 163 of the second amended complaint.
164. Deny the allegations set forth in paragraph 164 of the second amended complaint

except admit that defendant Agostino Abbatiello, Jr. is a shareholder and the chief executive officer of Pancho Villa's of Glen Cove, Inc.

165. Deny the allegations set forth in paragraph 165 of the second amended complaint.
166. Deny the allegations set forth in paragraph 166 of the second amended complaint.
167. Deny the allegations set forth in paragraph 167 of the second amended complaint.
168. Deny the allegations set forth in paragraph 168 of the second amended complaint.
169. Deny the allegations set forth in paragraph 169 of the second amended complaint.
170. Deny the allegations set forth in paragraph 170 of the second amended complaint.
171. Deny the allegations set forth in paragraph 171 of the second amended complaint.
172. Deny the allegations set forth in paragraph 172 of the second amended complaint.
173. Deny the allegations set forth in paragraph 173 of the second amended complaint.
174. Deny the allegations set forth in paragraph 174 of the second amended complaint.
175. Deny the allegations set forth in paragraph 175 of the second amended complaint.
176. Deny the allegations set forth in paragraph 176 of the second amended complaint.
177. Deny the allegations set forth in paragraph 177 of the second amended complaint.
178. Deny the allegations set forth in paragraph 178 of the second amended complaint.
179. Deny the allegations set forth in paragraph 179 of the second amended complaint.
180. Deny the allegations set forth in paragraph 180 of the second amended complaint.
181. Deny the allegations set forth in paragraph 181 of the second amended complaint.
182. Deny the allegations set forth in paragraph 182 of the second amended complaint.
183. Deny the allegations set forth in paragraph 183 of the second amended complaint.
184. Deny the allegations set forth in paragraph 184 of the second amended complaint.
185. Deny the allegations set forth in paragraph 182 of the second amended complaint.
186. Deny the allegations set forth in paragraph 186 of the second amended complaint.

- 187. Deny the allegations set forth in paragraph 187 of the second amended complaint.
- 188. Deny the allegations set forth in paragraph 188 of the second amended complaint.
- 189. Deny the allegations set forth in paragraph 189 of the second amended complaint.
- 190. Deny the allegations set forth in paragraph 190 of the second amended complaint.
- 191. Deny the allegations set forth in paragraph 191 of the second amended complaint.
- 192. Deny the allegations set forth in paragraph 192 of the second amended complaint.
- 193. Deny the allegations set forth in paragraph 193 of the second amended complaint.
- 194. Deny the allegations set forth in paragraph 194 of the second amended complaint

and refer all questions of law to the court.

- 195. Deny the allegations set forth in paragraph 195 of the second amended complaint.
- 196. Deny the allegations set forth in paragraph 196 of the second amended complaint.
- 197. Deny the allegations set forth in paragraph 197 of the second amended complaint.
- 198. Deny the allegations set forth in paragraph 198 of the second amended complaint.
- 199. Deny the allegations set forth in paragraph 199 of the second amended complaint.
- 200. Deny the allegations set forth in paragraph 200 of the second amended complaint.
- 201. Deny the allegations set forth in paragraph 201 of the second amended complaint.
- 202. Deny the allegations set forth in paragraph 202 of the second amended complaint.
- 203. Deny the allegations set forth in paragraph 203 of the second amended complaint.
- 204. Deny the allegations set forth in paragraph 204 of the second amended complaint.
- 205. Deny the allegations set forth in paragraph 205 of the second amended complaint.
- 206. Deny the allegations set forth in paragraph 206 of the second amended complaint.
- 207. Deny the allegations set forth in paragraph 207 of the second amended complaint.

208. Deny the allegations set forth in paragraph 208 of the second amended complaint.

209. Deny the allegations set forth in paragraph 209 of the second amended complaint.

210. Deny the allegations set forth in paragraph 210 of the second amended complaint.

211. Deny the allegations set forth in paragraph 211 of the second amended complaint.

212. Deny the allegations set forth in paragraph 212 of the second amended complaint.

213. Deny the allegations set forth in paragraph 213 of the second amended complaint.

214. Deny the allegations set forth in paragraph 214 of the second amended complaint

and refer all questions of law to the court.

215. Deny the allegations set forth in paragraph 215 of the second amended complaint.

216. Deny the allegations set forth in paragraph 216 of the second amended complaint.

217. Deny the allegations set forth in paragraph 217 of the second amended complaint.

218. Deny the allegations set forth in paragraph 218 of the second amended complaint.

219. Deny the allegations set forth in paragraph 219 of the second amended complaint.

220. Deny the allegations set forth in paragraph 220 of the second amended complaint

and refer all questions of law to the court.

221. Deny the allegations set forth in paragraph 221 of the second amended complaint.

222. Deny the allegations set forth in paragraph 222 of the second amended complaint.

223. Deny the allegations set forth in paragraph 223 of the second amended complaint.

224. Deny the allegations set forth in paragraph 224 of the second amended complaint.

225. Deny the allegations set forth in paragraph 225 of the second amended complaint.

226. Deny the allegations set forth in paragraph 226 of the second amended complaint

and refer all questions of law to the court.

- 227. Deny the allegations set forth in paragraph 227 of the second amended complaint.
- 228. Deny the allegations set forth in paragraph 228 of the second amended complaint.
- 229. Deny the allegations set forth in paragraph 229 of the second amended complaint.
- 230. Deny the allegations set forth in paragraph 230 of the second amended complaint.
- 231. Deny the allegations set forth in paragraph 231 of the second amended complaint.
- 232. Deny the allegations set forth in paragraph 232 of the second amended complaint.
- 233. Deny the allegations set forth in paragraph 233 of the second amended complaint.
- 234. Deny the allegations set forth in paragraph 234 of the second amended complaint.
- 235. Deny the allegations set forth in paragraph 235 of the second amended complaint.
- 236. Deny the allegations set forth in paragraph 236 of the second amended complaint.
- 237. Deny the allegations set forth in paragraph 237 of the second amended complaint.
- 238. Deny the allegations set forth in paragraph 238 of the second amended complaint.
- 239. Deny the allegations set forth in paragraph 239 of the second amended complaint.
- 240. Deny the allegations set forth in paragraph 240 of the second amended complaint

and refer all questions of law to the court.

- 241. Deny the allegations set forth in paragraph 241 of the second amended complaint.
- 242. Deny the allegations set forth in paragraph 242 of the second amended complaint.
- 243. Deny the allegations set forth in paragraph 243 of the second amended complaint.
- 244. Deny the allegations set forth in paragraph 244 of the second amended complaint.
- 245. Deny the allegations set forth in paragraph 245 of the second amended complaint.
- 246. Deny the allegations set forth in paragraph 246 of the second amended complaint.
- 247. Deny the allegations set forth in paragraph 247 of the second amended complaint.

- 248. Deny the allegations set forth in paragraph 248 of the second amended complaint.
- 249. Deny the allegations set forth in paragraph 249 of the second amended complaint.
- 250. Deny the allegations set forth in paragraph 250 of the second amended complaint.
- 251. Deny the allegations set forth in paragraph 251 of the second amended complaint.
- 252. Deny the allegations set forth in paragraph 252 of the second amended complaint.
- 253. Deny the allegations set forth in paragraph 253 of the second amended complaint.
- 254. Deny the allegations set forth in paragraph 254 of the second amended complaint.
- 255. Deny the allegations set forth in paragraph 255 of the second amended complaint.
- 256. Deny the allegations set forth in paragraph 256 of the second amended complaint.
- 257. Deny the allegations set forth in paragraph 257 of the second amended complaint.
- 258. Deny the allegations set forth in paragraph 258 of the second amended complaint.
- 259. Deny the allegations set forth in paragraph 259 of the second amended complaint.
- 260. Deny the allegations set forth in paragraph 260 of the second amended complaint.
- 261. Deny the allegations set forth in paragraph 261 of the second amended complaint.
- 262. Deny the allegations set forth in paragraph 262 of the second amended complaint.
- 263. Deny the allegations set forth in paragraph 263 of the second amended complaint.
- 264. Deny the allegations set forth in paragraph 264 of the second amended complaint.
- 265. Deny the allegations set forth in paragraph 265 of the second amended complaint.
- 266. Deny the allegations set forth in paragraph 266 of the second amended complaint.
- 267. Deny the allegations set forth in paragraph 267 of the second amended complaint.
- 268. Deny the allegations set forth in paragraph 268 of the second amended complaint.
- 269. Deny the allegations set forth in paragraph 269 of the second amended complaint.



- 270. Deny the allegations set forth in paragraph 270 of the second amended complaint.
- 271. Deny the allegations set forth in paragraph 271 of the second amended complaint.
- 272. Deny the allegations set forth in paragraph 272 of the second amended complaint.
- 273. Deny the allegations set forth in paragraph 273 of the second amended complaint.
- 274. Deny the allegations set forth in paragraph 274 of the second amended complaint.
- 275. Deny the allegations set forth in paragraph 275 of the second amended complaint.
- 276. Deny the allegations set forth in paragraph 276 of the second amended complaint.
- 277. Deny the allegations set forth in paragraph 277 of the second amended complaint.
- 278. Deny the allegations set forth in paragraph 278 of the second amended complaint.
- 279. Deny the allegations set forth in paragraph 279 of the second amended complaint.
- 280. Deny the allegations set forth in paragraph 280 of the second amended complaint.
- 281. Deny the allegations set forth in paragraph 281 of the second amended complaint.
- 282. Deny the allegations set forth in paragraph 282 of the second amended complaint.
- 283. Deny the allegations set forth in paragraph 283 of the second amended complaint.
- 284. Deny the allegations set forth in paragraph 284 of the second amended complaint.
- 285. Deny the allegations set forth in paragraph 285 of the second amended complaint.
- 286. Deny the allegations set forth in paragraph 286 of the second amended complaint.
- 287. Deny the allegations set forth in paragraph 287 of the second amended complaint.
- 288. Deny the allegations set forth in paragraph 288 of the second amended complaint.
- 289. Deny the allegations set forth in paragraph 289 of the second amended complaint.
- 290. Deny the allegations set forth in paragraph 290 of the second amended complaint.
- 291. Deny the allegations set forth in paragraph 291 of the second amended complaint.

- 292. Deny the allegations set forth in paragraph 292 of the second amended complaint.
- 293. Deny the allegations set forth in paragraph 293 of the second amended complaint.
- 294. Deny the allegations set forth in paragraph 294 of the second amended complaint.
- 295. Deny the allegations set forth in paragraph 295 of the second amended complaint.
- 296. Deny the allegations set forth in paragraph 296 of the second amended complaint.
- 297. Deny the allegations set forth in paragraph 297 of the second amended complaint.
- 298. Deny the allegations set forth in paragraph 298 of the second amended complaint.
- 299. Deny the allegations set forth in paragraph 299 of the second amended complaint.
- 300. Deny the allegations set forth in paragraph 300 of the second amended complaint.
- 301. Deny the allegations set forth in paragraph 301 of the second amended complaint.
- 302. Deny the allegations set forth in paragraph 302 of the second amended complaint.
- 303. Deny the allegations set forth in paragraph 303 of the second amended complaint.
- 304. Deny the allegations set forth in paragraph 304 of the second amended complaint.
- 305. Deny the allegations set forth in paragraph 305 of the second amended complaint.
- 306. Deny the allegations set forth in paragraph 306 of the second amended complaint.
- 307. Deny the allegations set forth in paragraph 307 of the second amended complaint.
- 308. Deny the allegations set forth in paragraph 308 of the second amended complaint.

### **COLLECTIVE ACTION CLAIMS**

- 309. Deny the allegations set forth in paragraph 309 of the second amended complaint.
- 310. Defendants do not dispute that plaintiffs seeks to proceed with the First and Third Causes of Action as a collective action. Defendants deny the substantive allegations of the

complaint and any allegations involving collective action and do not waive the right to challenge those allegations in Court.

311. Deny the allegations set forth in paragraph 311 of the second amended complaint.

**FEDERAL RULE OF CIVIL PROCEDURE RULE 23 CLASS ALLEGATIONS**

312. Defendants do not dispute that plaintiffs seek to proceed with the Second , Fourth, Fifth, Sixth and Seventh Causes of Action as a class action. Defendants deny the substantive allegations of the complaint and any allegations involving class action and do not waive the right to challenge those allegations in Court.

313. Deny the allegations set forth in paragraph 313 of the second amended complaint.

314. Deny the allegations set forth in paragraph 314 of the second amended complaint, including all sub-paragraphs.

315. Deny the allegations set forth in paragraph 315 of the second amended complaint.

316. Deny the allegations set forth in paragraph 316 of the second amended complaint.

317. Deny the allegations set forth in paragraph 317 of the second amended complaint.

318. Deny the allegations set forth in paragraph 318 of the second amended complaint.

319. Deny the allegations set forth in paragraph 319 of the second amended complaint.

320. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph 320 of the second amended complaint.

**ANSWERING AN ALLEGED FIRST CAUSE OF ACTION**

321. In response to paragraph 321 of the second amended complaint, defendants respond to the allegations in the same manner as they responded to paragraphs 1-320.

322. Deny the allegations set forth in paragraph 322 of the second amended complaint.

323. Deny the allegations set forth in paragraph 323 of the second amended complaint.

324. Deny the allegations set forth in paragraph 324 of the second amended complaint and refer to the referenced consent form for the exact contents thereof.

325. Deny the allegations set forth in paragraph 325 of the second amended complaint.

**ANSWERING AN ALLEGED SECOND CAUSE OF ACTION**

326. In response to paragraph 326 of the second amended complaint, defendants respond to the allegations in the same manner as they responded to paragraphs 1-325.

327. Deny the allegations set forth in paragraph 327 of the second amended complaint.

328. Deny the allegations set forth in paragraph 328 of the second amended complaint.

329. Deny the allegations set forth in paragraph 329 of the second amended complaint.

330. Deny the allegations set forth in paragraph 330 of the second amended complaint.

331. Deny the allegations set forth in paragraph 331 of the second amended complaint.

332. Deny the allegations set forth in paragraph 332 of the second amended complaint.

333. Deny the allegations set forth in paragraph 333 of the second amended complaint.

**ANSWERING AN ALLEGED THIRD CAUSE OF ACTION**

334. In response to paragraph 334 of the second amended complaint, defendants respond to the allegations in the same manner as they responded to paragraphs 1-333.

335. Deny the allegations set forth in paragraph 335 of the second amended complaint.

336. Deny the allegations set forth in paragraph 336 of the second amended complaint.

- 337. Deny the allegations set forth in paragraph 337 of the second amended complaint.
- 338. Deny the allegations set forth in paragraph 338 of the second amended complaint.
- 339. Deny the allegations set forth in paragraph 339 of the second amended complaint.
- 340. Deny the allegations set forth in paragraph 340 of the second amended complaint.

**ANSWERING AN ALLEGED FOURTH CAUSE OF ACTION**

341. In response to paragraph 341 of the second amended complaint, defendants respond to the allegations in the same manner as they responded to paragraphs 1-340.

- 342. Deny the allegations set forth in paragraph 342 of the second amended complaint.
- 343. Deny the allegations set forth in paragraph 343 of the second amended complaint.
- 344. Deny the allegations set forth in paragraph 344 of the second amended complaint.
- 345. Deny the allegations set forth in paragraph 345 of the second amended complaint.

**ANSWERING AN ALLEGED FIFTH CAUSE OF ACTION**

346. In response to paragraph 346 of the second amended complaint, defendants respond to the allegations in the same manner as they responded to paragraphs 1-345.

- 347. Deny the allegations set forth in paragraph 347 of the second amended complaint.
- 348. Deny the allegations set forth in paragraph 348 of the second amended complaint.
- 349. Deny the allegations set forth in paragraph 349 of the second amended complaint.
- 350. Deny the allegations set forth in paragraph 350 of the second amended complaint.

**ANSWERING AN ALLEGED SIXTH CAUSE OF ACTION**

351. In response to paragraph 351 of the second amended complaint, defendants respond to the allegations in the same manner as they responded to paragraphs 1-350.

352. Deny the allegations set forth in paragraph 352 of the second amended complaint.

353. Deny the allegations set forth in paragraph 353 of the second amended complaint.

354. Deny the allegations set forth in paragraph 354 of the second amended complaint.

**ANSWERING AN ALLEGED SEVENTH CAUSE OF ACTION**

355. In response to paragraph 355 of the second amended complaint, defendants respond to the allegations in the same manner as they responded to paragraphs 1-354.

356. Deny the allegations set forth in paragraph 356 of the second amended complaint.

357. Deny the allegations set forth in paragraph 357 of the second amended complaint.

**ANSWERING AN ALLEGED EIGHTH CAUSE OF ACTION**

358. In response to paragraph 358 of the second amended complaint, defendants respond to the allegations in the same manner as they responded to paragraphs 1-357.

359. Deny the allegations set forth in paragraph 359 of the second amended complaint.

360. Deny the allegations set forth in paragraph 360 of the second amended complaint.

**ANSWERING AN ALLEGED NINTH CAUSE OF ACTION**

361. In response to paragraph 361 of the second amended complaint, defendants respond to the allegations in the same manner as they responded to paragraphs 1-360.

362. Deny the allegations set forth in paragraph 360 of the second amended complaint.

363. Deny the allegations set forth in paragraph 363 of the second amended complaint.

364. Deny the allegations set forth in paragraph 364 of the second amended complaint.

**RESPONSE TO JURY DEMAND**

365. Deny that plaintiffs are entitled to a trial by jury.

WHEREFORE section immediately following paragraph 365 of the second amended complaint or any other relief. Defendants further deny each and every allegation in the Second Amended Complaint not specifically admitted herein.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

The second amended complaint, and each claim purported to be alleged therein, fails to allege facts sufficient to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

The second amended complaint, and each claim purported to be alleged therein, is barred by the applicable statute of limitations under the applicable federal and state laws.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

Plaintiffs and the putative class/collective action members are not entitled to damages, to the extent that they failed to mitigate their alleged damages.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

If plaintiffs and any putative class/collective action member sustained any injury, damage or loss by reason of any act, error or omission on the part of defendants, said injury, damage, or loss must be reduced on the basis of comparative fault or negligence of plaintiffs, putative class/collective action members, or others, which contributed to and proximately caused any such injury, damage, or loss.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

The second amended complaint, and each claim purported to be alleged therein, is barred in whole or in part by the doctrine of waiver.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

The second amended complaint, and each claim purported to be alleged therein, is barred to the extent plaintiffs or putative class/collective action members had unclean hands.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

The second amended complaint, and each claim purported to be alleged therein, is barred in whole or in part by judicial, equitable, and/or collateral estoppel.



**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

The second amended complaint, and each claim purported to be alleged therein, is barred in whole or in part by the doctrine of laches.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

To the extent plaintiffs and putative class/collective action members have received other benefits and/or awards attributable to an injury for which they seek compensation in this case, such benefits and/or awards should offset, in whole or in part, any award they receive here for the same injury.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

Plaintiffs lack standing to prosecute the claims purported to be alleged in the second amended complaint.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

Defendants have at all times acted in good faith and had reasonable grounds for believing that its pay practices complied with federal and state law.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs and putative class/collective action members are entitled to a jury trial only as to those issues for which a jury trial is permitted by the Fair Labor Standards Act.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

The second amended complaint, and each claim purported to be alleged therein, is barred

to the extent the court lacks subject matter jurisdiction over the stated claims.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

The putative collective action members cannot proceed collectively under 29 U.S.C. §216(b) because they are not similarly situated.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have not shown and cannot show that class or collective action treatment of the purported claims alleged in his complaint is superior to other methods of adjudicating the controversy.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

The types of claims alleged by plaintiffs on behalf of putative class/collective action members are matters in which individual questions predominate and thus are not appropriate for class or collective action treatment.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

The purported claims alleged by plaintiffs are neither common to nor typical of those, if any, of the alleged putative class members.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE**

This case is not appropriate for class or collective action certification because plaintiffs are not able to fairly and adequately protect the interests of all members of the putative class.

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE**

The putative class members are not so numerous that joinder is impracticable.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

The second amended complaint, and each claim purported to be alleged therein, cannot proceed as a class and/or collective action because difficulties likely to be encountered render the action unmanageable.

**AS AND FOR A TWENTY FIRST AFFIRMATIVE DEFENSE**

Certain of the interests of the putative class members are in conflict with the interests of plaintiff and/or all or certain sub-groups of the putative class members.

**AS AND FOR A TWENTY SECOND AFFIRMATIVE DEFENSE**

Plaintiff Antonio Garcia is exempt from the overtime provisions of the Fair Labor Standards Act and the New York Labor Law because he was at all relevant times a salaried executive employee.

**AS AND FOR A TWENTY THIRD AFFIRMATIVE DEFENSE**

Plaintiff Antonio Garcia is exempt from the overtime provisions of the Fair Labor Standards Act because he was a creative professional within the meaning of 29 CFR §541.302.

**AS AND FOR A TWENTY FOURTH AFFIRMATIVE DEFENSE**

Plaintiff Antonio Garcia is exempt from the overtime provisions of the Fair Labor Standards Act because he was a learned professional within the meaning of 29 CFR §541.301.

WHEREFORE, defendants pray for a judgment dismissing the complaint and/or denying the plaintiffs claims, in their entirety, and awarding the defendants their reasonable attorneys' fees and costs of this action along with such other and further relief as to this court seems just equitable and proper.

Dated: Melville, New York  
April 6, 2010

Yours, etc.,

KUSHNICK & ASSOCIATES, P.C.

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